IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

J U D G M E N T

State of Rajasthan Vs. Mewa Singh & others

D.B.CRIMINAL APPEAL NO.303/1988
against the judgment dt.24.2.1988 passed by
the Addl.Sessions Judge, Nohar,
in Sessions Case No.19/1987.

Date of Judgment: Nov.20, 2007

P R E S E N T

HON'BLE MR.JUSTICE DEO NARAYAN THANVI

Mr.J.P.S.Choudhary, Public Prosecutor.

Mr.Vijay Bishnoi)
Mr.Laxman Singh) for respondents.

BY THE COURT:

1. This appeal is directed against the judgment of acquittal passed by the learned Additional Sessions Judge, Nohar, on 24.2.1988, whereby the accused respondents were acquitted for the offences under sections 304B and 306 IPC.

2. The brief facts of the case are that the F.I.R. (Ex.P.16) was lodged at the Police Station, Bheerani by one Kashi Ram son of Gopi Ram that her younger sister Mst.Mohra was married with Mewa Singh, respondent No.1, about six and half years back and "Muklava" was made two years after the marriage. At the time of marriage, the amount of Rs.9,100/- was given and the amount of Rs.2,100/- was given at the time of "Muklava" alongwith clothes and ornaments but the in-laws of Mst.Mohra were not satisfied and they started demanding more dowry. About two and half years back, when he went at the in-laws house of Mst.Mohra, she told about beating given to her by her husband, mother-in-law, father-in-law and maternal uncle in law Tulsi Ram. They also tried to administer poison to her but she was alert. She also told that her in-laws were bent upon to kill her. Upon this, his father Gopi Ram, Nihal Singh & Deepa Ram went at the in-laws house of Mst.Mohra with the Panchayat and told about the cruelty being committed on Mst.Mohra by husband and father-in-law. Upon this, accused Mewa Singh told that "you give an amount of Rs.50,000/- and then you will not get any complaint". When they expressed their inability to give Rs.50,000/-, then Panchayat people and villagers told to send Mst.Mohra to her in-laws. When Mst.Mohra went to her in-laws, she got a daughtr. Thereafter, when he went to bring Mst.Mohra at the parental house, they first refused but later on, they sent

her after fifteen days on having committed to give the clothes etc. Mst.Mohra told him that she was beaten by her in-laws like animals. Thereafter, after fifteen days of "Holi", Mst.Mohra was again sent to her in-laws with clothes etc. but as and when her parental people used to visit, she was not allowed to meet them. The informant Kashi Ram was also treated like this. On the night of preceding day, Deep Chand came to his house and told that on 17.1.1987, he heard the cry of Mst.Mohra from his field and saw that accused Mewa Singh, who was beating her in the presence of his father, mother and Tulsi Ram. Deep Chand also told that the dead body of Mst.Mohra was taken out from the Canal. Upon this report, the police registered a case for the offences u/ss.498A and 306 IPC. After investigation, the challan was filed. All the four accused respondents were charged accordingly to which they pleaded not guilty. The prosecution examined eight witnesses. The statements of accused were recorded under Section 313 CrPC. They produced two witnesses in defence. After hearing the arguments, the learned trial Judge framed the following three questions:

> " इस प्रकरण के उचित एवं सही निर्णय के लिये निम्नलिखित बिन्दू निर्मित किये जाते है :-
>
> (1)क्या मु. मोहरा की शादी घटना से 7 साल के अन्दर-2 हुई थी ?
>
> (2)क्या अभियुकतगण मु. मोहरा को कम दहेज लाने के कारण वा

और दहेज लाने के लिये मानसिक व शारीरिक यातनाऐं देते रहते थे ?

(3)क्या मु. मोहरा ने उपरोक्त यातनाओं के फलस्वरूप मजबुर होकर आत्महत्या कर ली ?"

3. Upon appreciation of the evidence brought on record, the learned trial Judge came to the conclusion that not a single question can be answered in positive and he acquitted all the four accused respondents.

4. So far as the first question is concerned, the learned trial Judge came to the conclusion that in the F.I.R. Ex.P.16, it has been written by Kashi Ram (PW 5) that deceased Mst.Mohra was married about six and half years before the incident but in the statement, it is not clear as to whether Mst.Mohra was married in Samvat 2036 or 2037. In contrast to the oral testimony, which was also self contradictory and uncorroborative. the learned trial Judge believed the testimony of Sheeshpal (DW 1), which was based on "Nyota Bahi" (Ex.D.3) written by his father in which it was written that Mst.Mohra was married on 9.5.1979 i.e. Baishakh Sudi Samvat 2036. This "Nyota Bahi" indicates that how many people gave "baan" (money) in the marriage of Mst.Mohra. When this witness was cross examined by the prosecution, no question was asked to him with regard to the genuineness of this document. While relying upon this document,

the genuineness of which has not been questioned, the learned trial Judge has not committed any error in coming to the conclusion that the marriage of deceased Mst.Mohra was not solemnized within seven years of the date of incident, therefore, the offence u/s.304B IPC has been rightly held to be not proved.

5. So far as the questions No.2 and 3 are concerned, father of deceased viz; Gopi Ram has not been produced. The main evidence of Nihal Singh son of Harnam Singh (PW 1) and Deep Chand (PW 4), who are hostile witnesses and they have not supported the story of the prosecution. Inder Chand (PW 3), Mohan Singh, Dy.S.P. (PW 6), Maneer Khan, Head Constable (PW 7) and Ramjilal (PW 8) are the police officers, who participated in the investigation. Now, only remains the testimony of Nihal Singh son of Jeeram (PW 2) and Kashi Ram (PW 5).

6. Kashi Ram (PW 5) is the person, who has given report Ex.P.16, which is a typed report, on the next day of the incident but when he was examined, he has said that he has not given any typed report to the S.H.O. but submitted report written by some boy. He has also said that Ex.P.16 is not that report, which he got written from a boy. The second important evidence is about the Panchayat and demand of dowry of Rs.50,000/-. In

this connection, witnesses of Panchayat are father of deceased i.e. Gopi Ram, Deep Chand (PW 4) and Nihal Singh son of Jeeram (PW 2). Deep Chand has turned hostile. Gopi Ram has not been produced by the prosecution and the evidence of Nihal Singh (PW 2) is based on the version of Gopi Ram, who has not been produced. Thus, the testimony of Nihal Singh (PW 2) is hearsay one and does not inspire confidence. The statement of Nihal Singh (PW 2) with regard to dowry demand is contradictory. In examination in chief, he has said that all the accused demanded Rs.50,000/- from Gopi Ram and in the cross, he has said that this demand was made by only accused Mewa Singh. The finding of the learned trial Court with regard to demand of dowry and cruelty that normally a lady tells such things to her mother but her mother has also not been produced, is based on right perspective. Another witness, who has been withheld by the prosecution, is Lichhma. She was also married in the same house, where deceased was married but she was called later on after the death of Mst.Mohra from in-laws house. Had there been any cruelty or demand of dowry, Lichhma would have been the best evidence to prove it but she has also not been produced by the prosecution. Thus, while withholding three material witnesses, the prosecution story rolls round towards suspicion. Hence, the finding of the learned trial Judge about not believing the theory of cruelty and demand of dowry and relying

upon the version of the defence that Mst.Mohra committed suicide on account of her daughter's disease viz; “Piliya”, is plausible and based on the true appreciation of evidence on record, which requires no interference.

7. Consequently, this State Appeal is dismissed and the order of acquittal passed by the learned Additional Sessions Judge vide his judgment dated 24.2.1988 is confirmed. The respondents are on bail. Their bail bonds stand cancelled.

(DEO NARAYAN THANVI), J.

RANKAWAT JK, PS